

UNITED STATES OF AMERICA :
:
v. : **CRIMINAL NO. 02-360**
:
OTTO L. NUSS :

The United States of America, by its attorneys, Patrick L. Meehan, United States Attorney for the Eastern District of Pennsylvania, and Robert E. Goldman, Assistant United States Attorney for the district, submits the following Change of Plea Memorandum.

The defendant is charged in the indictment with (Counts One through Thirteen) thirteen counts of kidnapping, in violation of Title 18, United States Code, Section 1201, and (Count Fourteen) one count of use of a gun during a crime of violence, in violation of Title 18, United States Code, Section 924(c).

The plea agreement has been signed by defendant. The terms of the plea are summarized as follows:

1. The defendant will enter a plea of guilty to Counts One through Thirteen of the indictment, charging him with kidnapping.
2. The parties agree that the plea agreement is made pursuant to Rule 11(c)(1)(C) and that a four-year term of imprisonment, followed by five years of supervised

release, is the appropriate disposition of the case.

3. In addition to any conditions set by the Court, the defendant and the government agree pursuant to Rule 11(c)(1)(C) that the following conditions of supervised release shall be imposed in addition to any other conditions imposed by the Court:

- a. The defendant shall undergo a prescribed regimen of medical, psychiatric, or psychological care or treatment as directed by the Court and/or probation officer;
- b. The mental health treating facility or physician shall file regular reports with the Court on a schedule established by the Court;
- c. The defendant, as part of the mental health treatment program, shall take all medication as directed and submit to urine testing at the direction and discretion of the probation officer;
- d. The defendant shall undergo all inpatient mental health treatment as directed by defendant's mental health treating facility or physician or by the Court;
- e. Pursuant to § 5D1.3(a)(8) of the Sentencing Guidelines, the defendant shall submit to the collection of a DNA sample from the defendant at the direction of the probation officer;
- f. The defendant shall have no contact with the victims and their families;
- g. The defendant shall be prohibited from the occupation of school bus driver and any other occupation, business, or profession which would bring him in regular contact with minors; and
- h. The defendant shall not possess, purchase, or acquire any firearm or

dangerous weapon.

4. At the time of sentencing, the government will move to dismiss Count Fourteen of the Indictment.

5. The parties agree and stipulate that, as of the date of this agreement, the defendant has demonstrated acceptance of responsibility for his offense making the defendant eligible for a 2-level downward adjustment under Guideline Section 3E1.1(a).

6. The parties agree and stipulate that, as of the date of this agreement, the defendant has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying the government of his intent to plead guilty and by timely providing complete information about her own involvement in the offense making the defendant eligible for an additional 1-level downward adjustment under Guideline Section 3E1.1(b).

7. The government agrees and stipulates that a departure from the applicable sentencing guideline range, pursuant to Guideline Section 5K2.13, is warranted, based upon the defendant's diminished capacity at the time of the commission of the offense, but the Court may not impose any sentence except as set forth in paragraph 2, that is, a four-year term of imprisonment and a five-year-term of supervised release.

8. The defendant voluntarily and expressly waives all rights to appeal or collaterally attack the defendant's conviction, sentence, or any other matter relating to this prosecution, whether such a right to appeal or collateral attack arises under 18 U.S.C. § 3742, 28 U.S.C. § 1291, 28 U.S.C. § 2255, or any other provision of law, as set forth in detail in paragraph 9 of the Plea Agreement.

III. ELEMENTS OF THE OFFENSE

Counts One through Thirteen charge a violation of the kidnapping statute, in violation of 18 U.S.C. § 1201. The essential elements of the offense are:

1. that the defendant transported in interstate commerce;
2. an unconsenting person who was unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away;
3. that the person was held for ransom, reward, or otherwise; and
4. that the defendant acted knowingly and wilfully.

If the victim is of such an age or mental state as to be incapable of having a recognizable will, kidnapping may be established by showing that it was against the will of parents or legal guardian of the victims.

The term “otherwise,” as set forth in the third element above, is interpreted broadly so that a conviction is proper if a victim was taken for some reason that the defendant considered of sufficient benefit to himself, or for some purpose of his own.

IV. MAXIMUM PENALTIES

Kidnapping provides for a maximum sentence on each count of up to life imprisonment, a \$250,000 fine, 5 years supervised release, and a mandatory \$100 special assessment. Therefore, the maximum sentence that may be imposed in this case is up to life imprisonment, a \$3,250,000 fine, 5 years supervised release, and a mandatory \$1,300 special assessment.

V. FACTUAL BASIS FOR THE PLEA

The government would establish at trial the following facts:

Defendant Otto L. Nuss was a school bus driver in the Oley School District, Oley Township, Berks County. He had been a driver for four to five months. Nuss' duty is to drive children to a the Berks County Christian School in Exeter Township from the Oley School District building.

In the morning hours of January 24, 2002, Nuss was the driver of bus # 22 which at approximately 7:40 am was to transport 13 students (grades one through ten) from Oley Valley High School to the Berks Christian School in Exeter Township, PA. The bus was scheduled to arrive shortly thereafter, a six mile drive. The bus never arrived. A student witness advised law enforcement that he had observed the bus headed eastbound on Route 73, a direction opposite the scheduled route. At 8:20 a.m., the Berks Christian School notified Oley Township Police Department that the bus had not arrived. At approximately 9:00 a.m., a civilian witness notified law enforcement that an Oley Valley School bus was headed south on Route 100 south of Pottstown, PA. All attempts to reach Nuss by a two-way radio on the bus were unsuccessful.

At approximately 1:45 p.m., Nuss approached an off-duty police officer inside a Family Dollar Store in Prince George's County, Landover Hills, Maryland. Nuss advised that he had kids from Oley and had brought them down to Washington. Nuss advised that he thought that he had done something wrong. Nuss further advised that he had a rifle behind the seat in the bus. The police officer then located the bus and a M-1A .308 caliber semi-automatic rifle loaded with five rounds was found behind the driver's seat. The 13 students that had been picked up by Nuss on the bus route were located within the bus.

A later search of the bus by the FBI during the evening hours of January 24, 2002, located an additional 93 rounds of ammunition for the rifle behind the driver's seat.

Maryland Law Enforcement Witness

Prince George's County Police Officer Chabla would testify that at approximately 2:00 p.m. on January 24 he was in a Dollar Store when Nuss approached him. Nuss stated that he needed to notify the authorities that he had the children from Oley, PA. He stated that the children were all right and that the parents needed to know that they were all right. Nuss stated that he wanted to do something nice for them and decided to take them to Washington, D.C. The officer asked if Nuss had taken them against their will and Nuss replied that he had. As they approached the bus, Nuss told the officer that there was a rifle on the bus. Nuss stated that the rifle was a "sign of freedom." Nuss stated that he knew he had done something wrong.

FBI Interview of Nuss

After his arrest on January 24, 2002, Nuss waived his Miranda rights and provided the following information:

Nuss stated that he got the idea to take the children to Washington about one week prior to the incident. Prior to leaving his house that day, Nuss placed his loaded rifle on the bus. This was the first time he had taken the weapon on the bus with him. After picking up the children, Nuss told them that they were going to D.C. Nuss heard but ignored a dispatcher who was trying to reach him during the journey.

Nuss stated that he knew he would get in trouble for the trip but wanted to show that he could be around children, even with a gun, and not hurt anyone. Nuss advised that he only wanted to show the children Washington and that they would then return.

Nuss stated that he had written his will about a week prior to the trip. He could not explain why he had recently written his will and left it on his kitchen table prior to the trip. Nuss stated that he knew that what he had done was wrong.

Student Interviews

The students found on the bus were interviewed by Agents of the FBI. The students advised that during the course of the trip a bus dispatcher tried to reach Nuss, but Nuss ignored the calls. The students observed the rifle behind Nuss and Nuss instructed them not to go near it. Some of the students advised the FBI that they feared that Nuss was going to kill them. One of the students, fearing what was going to happen, wrote 911 in reverse on a fogged bus window. Some students planned to storm Nuss if he reached for the rifle, others planned to jump from the emergency door.

Nuss, by all accounts, treated the children well. He bought them lunch at a fast food restaurant and did not threaten them or point the gun at them.

During the course of the trip, many of the children spoke with Nuss concerning where they were going. The following summarizes Nuss' responses:

One student advised that Nuss told him that he was going to teach the kids something historical and that he was going to show that he was against Bin Laden. When asked what the gun was for, Nuss responded that "the gun was a symbol."

Another student advised that Nuss stated that the trip was "to teach a lesson." This student stated that he feared during the trip that Nuss was going to kill them.

Another student advised that Nuss stated that he was going to the White House so that he could prove something to them. She saw maps near Nuss that were highlighted as to the location of the White House.

Another student stated that Nuss stated that he wanted to go to Washington to show the president that he did not like Bin Laden. During the trip, some of the children planned to escape from the back of the bus once the bus stopped.

Another student stated that Nuss stated that he had the gun because he was “standing up for the nation” and that it was a “wake up call” to show or teach Bin Laden something. Some of the children discussed a plan if Otto tried to shoot them.

Another student stated that Nuss said they were going to Washington to meet very special people and that the gun was a symbol. Nuss talked about how he hated Bin Laden.

Search of Nuss’ Residence

During the evening hours of January 24, 2002, a search was conducted of the residence of Nuss in Berks County, Pennsylvania. During the search approximately 48 weapons were located within the residence. These included one dozen handguns and three dozens rifles. Thousands of rounds of ammunition were also located within the residence. All of the guns were legally owned. They were removed from the residence by the FBI.

A last will and testament of Nuss was sitting on his kitchen table. It had been signed by Nuss two days before. There was no note left explaining his actions however.

Psychiatric Testimony

Had the defendant raised an insanity defense at trial, the government would have presented the testimony of psychiatrist Dr. Timothy Michaels, who would testify that in his

opinion, at the time of the commission of the offense, the defendant did not have a severe mental disease or defect which prevented him from appreciating the nature and quality or the wrongfulness of his acts.

Respectfully submitted,

PATRICK L. MEEHAN
United States Attorney

Robert E. Goldman
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the Government's
Change of Plea Memorandum on counsel for the defendant:

Kerry Kalmbach
418 West State Street
P.O. Box 101
Kennett Square, Pennsylvania 19348

Robert E. Goldman
Assistant United States Attorney

Date: _____